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Of Attorneys for Defendants City of Gresham, Carla Piluso and Robert A. Fussell

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

RAYMOND M. TERCEK,  
Plaintiff,  
v.  
CITY OF GRESHAM, an Oregon  
Municipal Corporation, CARLA PILUSO,  
Chief of Police, and ROBERT A. FUSSELL,  
City Manager,  
Defendants. )  
Case No. CV03-731-AS  
DEFENDANTS' ANSWER TO COMPLAINT  
42 U.S.C. § 1983 - Violation of Procedural  
Due Process (Property Interest and  
Liberty Interest); Wrongful Discharge;  
Defamation; Breach of Implied Contract;  
Promissory Estoppel; Intentional  
Infliction of Emotional Distress  
**DEMAND FOR JURY TRIAL**

In answer to plaintiff's Complaint, defendants City of Gresham, Carla Piluso and Robert Fussell admit, deny and allege as follows:

1.

Defendants accept plaintiff's jurisdictional statement.

2

Defendants admit paragraphs 4 and 5.

3.

With respect to paragraph 3, defendants admit the first sentence and that plaintiff was employed as a Captain in the Gresham Police Department from approximately May 1, 1997, until he was laid off.

4.

With respect to paragraph 6, defendants admit the first sentence, but deny the second sentence as phrased.

5.

Except as expressly admitted above, defendants deny each and every remaining allegation of plaintiff's Complaint and the whole thereof, either because the allegations are untrue, or because defendants lack sufficient information at this point to specifically admit or deny the allegations.

BY WAY OF FURTHER ANSWER AND FIRST AFFIRMATIVE DEFENSE, defendants allege as follows:

6.

Plaintiff's first and second claims for relief fail to state claims upon which relief can be granted.

BY WAY OF FURTHER ANSWER AND SECOND AFFIRMATIVE DEFENSE, defendants allege as follows:

7.

Plaintiff has not alleged any claim for relief against defendant Fussell.

BY WAY OF FURTHER ANSWER AND THIRD AFFIRMATIVE DEFENSE, defendants allege as follows:

8.

Defendants Piluso and Fussell are entitled to qualified immunity in connection with plaintiff's § 1983 claims.

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BY WAY OF FURTHER ANSWER AND FOURTH AFFIRMATIVE DEFENSE,  
defendants allege as follows:

9.

Plaintiff has failed to allege a claim for relief in his third, fourth, fifth, sixth or seventh claims for relief.

BY WAY OF FURTHER ANSWER AND FIFTH AFFIRMATIVE DEFENSE,  
defendants allege as follows:

10.

Plaintiff's sixth claim for relief is barred by the statute of limitations.

BY WAY OF FURTHER ANSWER AND SIXTH AFFIRMATIVE DEFENSE,  
defendants allege as follows:

11.

Plaintiff's State law claims are subject to the conditions, limitations and immunities contained in Oregon's Tort Claims Act, ORS 30.265, et seq.

Defendants Piluso and Fussell are not proper parties on these claims pursuant to ORS 30.265(1).

WHEREFORE, having fully answered plaintiff's Complaint, defendants pray for judgment in their favor, to include an award of their costs, disbursements and attorney fees incurred herein pursuant to 42 U.S.C. § 1988, in that some or all of plaintiff's § 1983 claims are frivolous.

Defendants respectfully demand trial by jury.

DATED this 24<sup>th</sup> day of July, 2003.

MILLER & WAGNER LLP

By: s/ Robert S. Wagner  
Robert S. Wagner, OSB #84411  
Trial Attorney for Defendants  
(503) 299-6116

CERTIFICATE OF SERVICE

I hereby certify that on the 24<sup>th</sup> day of July, 2003, I served the foregoing DEFENDANTS' ANSWER TO COMPLAINT, on the following parties at the following addresses:

Judy Danelle Snyder  
Attorney at Law  
1000 S.W. Broadway, Suite 1500  
Portland, OR 97205  
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by CM/ECF and by mailing to her a true and correct copy thereof, certified by me as such, placed in a sealed envelope addressed to her at the address set forth above, and deposited in the U.S. Post Office at Portland, Oregon, on said day with postage prepaid.

s/ Robert S. Wagner  
Robert S. Wagner